

E-filed 5/21/07

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARCUS L. HUDSON,

Petitioner,

vs.

A.A. LAMARQUE, Warden,

Respondent.

No. C 03-1876 JF (PR)

ORDER DENYING MOTION
TO EXPEDITE CASE;
DIRECTING PETITIONER TO
FILE A SECOND AMENDED
PETITION

(Docket No. 3)

Petitioner, a state prisoner proceeding pro se, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On March 5, 2004, the Court ordered Respondent to show cause why the petition should not be granted. On April 19, 2004, Respondent filed a motion to dismiss the petition for failure to exhaust state remedies. Petitioner filed a traverse opposing the motion to dismiss and a motion to withdraw and stay his pending habeas petition in order to exhaust his state court remedies. The Court granted Respondent's motion to dismiss and dismissed the petition with leave to amend. The Court denied Petitioner's motion to withdraw and stay the instant petition without prejudice. The Court directed Petitioner to file an amended petition containing only exhausted claims and renew his motion to stay the amended petition. Petitioner filed an

1 amended petition, which was mistakenly opened as a new habeas action in case no.
2 C 05-1486 JF (PR) on April 5, 2005. Thereafter, Petitioner notified the Court that his
3 state habeas petition was denied by the California Supreme Court. Accordingly, it
4 appears that Petitioner has now exhausted all of his claims. On May 7, 2007, Petitioner
5 filed a motion to expedite his case. The Court will DENY Petitioner's motion (docket no.
6 30) without prejudice and direct Petitioner to file a second amended petition containing
7 all of his exhausted claims **within thirty days** of the date this order is filed, as set forth
8 below.

9 CONCLUSION

10 1. Petitioner's motion to expedite the case (docket no. 30) is DENIED without
11 prejudice.

12 2. Petitioner shall file a second amended petition containing his newly
13 exhausted claims and his exhausted claims **within thirty days** of the date this order is
14 filed. Petitioner shall include the caption and civil case number used in this order
15 (No. C 03-1876 JF (PR)) and the words "SECOND AMENDED PETITION" on the first
16 page of the Court's habeas form, enclosed with this order. Petitioner may not incorporate
17 material from his earlier petitions by reference, therefore he must include all supporting
18 documentation, such as exhibits, with the second amended petition. Petitioner's second
19 amended petition must include all of the exhausted claims he intends to raise in this
20 federal habeas action, including the exhausted claims in his amended petition and the
21 additional newly exhausted claims.

22 3. It is Petitioner's responsibility to prosecute this case. Petitioner is
23 reminded that all communications with the Court must be served on Respondent by
24 mailing a true copy of the document to Respondent's counsel. Petitioner must keep the
25 Court and all parties informed of any change of address by filing a separate paper
26 captioned "Notice of Change of Address."

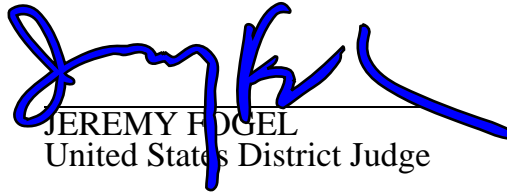
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1 Petitioner must comply with the Court's orders in a timely fashion. Failure to do so may
2 result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of
3 Civil Procedure 41(b).

4 IT IS SO ORDERED.

5 DATED: 5/18/07


JEREMY FOGEL
United States District Judge

1 A copy of this ruling was mailed to the following:

2 Marcus L. Hudson
3 T-50133
4 High Desert State Prison
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